

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 6390,

Petitioner,

v.

CITY OF UNIVERSITY CITY,

Respondent.

)
)
)
)
)
)
)
)
)
)

Public Case No. R 89-022

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Communications Workers of America, Local 6390, of a petition for certification as public employee representative of all dispatchers in the University City, Missouri, at which representatives of Local 6390 and the City were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, employer member Rainey Crawford, and employee member David Langston. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1986.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

Dispatchers work in the City's police and fire communication center providing seven-day per week, 24-hours per day coverage of police and fire communications. This work involves receiving phone calls from the public for emergency police and fire assistance, processing the calls or messages and dispatching police and fire

personnel/equipment. Dispatchers operate two-way radios and computer systems and maintain records of all dispatches. Dispatchers work rotating shifts; there are three main shifts with four people on each crew, but one member of each crew is always off work due to the rotating work cycle. There are normally three dispatching work stations which are known as primary, secondary, and third stations; dispatchers rotate by a fixed schedule from station to station so they know in advance what their next work station will be. In 1988, there were 12 dispatchers who were supervised by the Police Communication Sergeant (Montgomery); he was responsible for the dispatch area.

The City began considering the creation of a new dispatch position in the fall of 1988. In the spring of 1989, the City created this new position which it entitled "Lead Dispatcher/Supervisor" (hereinafter referred to as Lead Dispatcher). Three such positions were filled in May, 1989 when Sharon Cooper, James Costello and Lonnie Kramer were promoted to the new position from within. As a result of these promotions, there are now nine dispatchers and three Lead Dispatchers. Now, in the chain of command, the dispatchers report to the Lead Dispatchers who report to the Communications Sergeant or, in his absence, to the on-duty Watch Commander. One Lead Dispatcher is assigned to each shift, but there are occasions when a shift functions without a Lead Dispatcher. Lead Dispatchers rotate from work station to work station just like the dispatchers.

Lead dispatchers are expected to have the following skills and abilities: to be knowledgeable of and efficient in dispatcher duties, to be knowledgeable of all rules and regulations, to be efficient in the operation of the REJIS (Regional Justice Information System) computer, to be familiar with the report filing system and equipment used on the job, to be knowledgeable of the geographic area of University City, to be able to

understand and follow orders, to understand police practices and procedures, and to be able to react quickly and calmly in emergency situations.

The three Lead Dispatchers spend nearly all of their work time doing dispatch work and performing the same duties as the dispatchers. In addition though, they have assumed the functions formerly performed by the Communications Sergeant with regard to the dispatch area. Specifically, they are responsible for overseeing all dispatch activities performed on their shift. This includes monitoring the dispatchers to ensure they follow the correct rules and regulations. Lead Dispatchers take charge in the event of unusual or emergency situations which occur on their shift. They also train new dispatchers.

Each of the Lead Dispatchers have been assigned a specific duty formerly performed by the Communication Sergeant: Costello verifies all dispatcher time cards and also reviews completed radio cards and other dispatch records to determine if the necessary information is present and accurate; Kramer schedules vacation days and the hours of work for the part-time employees; and Cooper coordinates the use of the REJIS (Regional Justice Information System) computer which is used to run license plates, arrest warrants, etc.

Another function performed by the Lead Dispatchers that was formerly performed by the Communication Sergeant is the authority to initially approved time off. Lead Dispatchers can approve planned leave requests from the dispatchers, but these requests then go up the chain of command for possible independent review. Dispatchers, though, report unplanned absences (such as illness) to the Sergeant or Captain--not the Lead Dispatcher. Once leave is granted, Lead Dispatchers are responsible for securing a replacement for the absent employee.

As of the time of the hearing herein, Lead Dispatchers had not hired, disciplined, transferred or evaluated the dispatchers nor effectively recommended such action. A dispatcher was recently hired and the Lead Dispatchers were not involved in that hiring process. Although one Lead Dispatcher (Costello) had recommended in writing that a probationary employee be taken off probation, this memo was written at the direction of Captain Wilcox (the commander of the Bureau of Services).

Lead Dispatchers are placed on level 10 of the City's pay schedule and dispatchers are on level 7A; each pay level has numerous longevity steps. The pay differential between these levels at the top step is approximately 15%. Cooper and Costello received a step increase (that amounted to about 5%) when they became Lead Dispatchers.

CONCLUSIONS OF LAW

Local 6390 has petitioned to be certified as public employee representative of a bargaining unit comprised of all dispatchers in the University City police department. The City contends that the three Lead Dispatchers are supervisory employees and therefore should be excluded from the bargaining unit. The sole issue before the Board then is whether the Lead Dispatchers are to be included in a bargaining unit with the dispatchers.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Although Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", we are satisfied that in the context of this case a unit of dispatchers constitutes an appropriate bargaining unit.

The Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. See St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976) and Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo. App. 1977). Here, the City contends the Lead Dispatchers are supervisors, so it is necessary to determine if such is, in fact, the case. It is initially noted in this regard that although the position at issue (i.e. "Lead Dispatcher/Supervisor") contains the word "Supervisor" in the job title, that is not controlling here; we look at the duties the individual performs, not the job title. Similarly, although the individuals who hold the Lead Dispatcher position may have been told they possess or will possess supervisory authority, our determination herein is based on the type of supervisory authority actually possessed.

Over the years, the Board has consistently considered the following factors in determining if a position is supervisory in nature:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The City contends the Lead Dispatchers meet all of the above factors. In the City's view, the Lead Dispatchers are supervisors and to include them in the proposed

bargaining unit with the dispatchers would erode their ability to supervise the dispatchers. Based on the reasons set forth below, the Board rejects the City's arguments and concludes that the Lead Dispatchers are not true supervisory employees.

Directing the Work Force

There is no question that the Lead Dispatchers have assumed some administrative duties from the Communications Sergeant with regard to the dispatch area and received additional compensation as a result. Foremost in this regard is that the Lead Dispatchers now direct the dispatchers and are in charge of the day to day operations of the dispatch center. Having said that though, the Lead Dispatchers continue to spend most of their time doing the same work as that performed by dispatchers. It follows then that they spend very little of their time supervising other employees. Given their active involvement in performing routine dispatching duties, the Board concludes that any oversight function they perform is incidental to their supervising the dispatch activity. The Board is persuaded that the Lead Dispatchers primarily supervise the dispatch activity rather than the dispatchers themselves. The amount of independent judgment exercised by the Lead Dispatchers in directing the work force is insufficient to ascribe to them supervisory status.

This conclusion is buttressed by the record which shows that up to the date of the hearing, the Lead Dispatchers had not in fact hired, fired, disciplined, or recommended such action. Each of these points is addressed below.

Hiring

In the one instance where a dispatcher was hired after the Lead Dispatcher position was created, the Lead Dispatchers did not participate in the hiring process.

Although the employer contends the reason the Lead Dispatchers did not participate was because of a manpower shortage, it appears from the record that even if the Lead Dispatchers do sit in on interviews of dispatcher applicants in the future, the ultimate decision making in this respect rests with Captain Wilcox--not the Lead Dispatchers.

Promotions/Transfers

The evidence also shows that the Lead Dispatchers have virtually no authority to effectively recommend promotions or transfers. Although one Lead Dispatcher (Costello) gave his written recommendation that a probationary dispatcher be taken off probation, this memo was generated at the request of Captain Wilcox. Moreover, it was Wilcox, not Costello, who made the ultimate decision whether the probationary dispatcher was taken off probation. Other than this one instance, there are no other examples in the record where Lead Dispatchers evaluated the dispatchers (either formally or informally).

Discipline

With regard to disciplinary matters, although the City contends the Lead Dispatchers may recommend discipline of dispatchers, the record indicates they have little authority to do so. At most, the Lead Dispatchers have only independently administered corrections and admonishments to dispatchers to ensure they follow the correct rules, regulations and procedure. It appears from the record that if a Lead Dispatcher experienced disciplinary problems with a dispatcher, they would report the matter to Sergeant Montgomery or Captain Wilcox who would then investigate the matter and make an independent determination. Even if the Lead Dispatchers gave their recommendation to the Captain regarding a disciplinary matter, he is not constrained to accept such an opinion. Thus, the Lead Dispatchers exercise little independent discretion in the administration of discipline.

While the Lead Dispatchers' job description provides that they are to ensure that "personnel are fit for duty", the record does not indicate that any Lead Dispatchers have ever sent anyone home who was not "fit for duty". On balance then, we find that the Lead Dispatchers' ability to issue corrections to dispatchers and ensure that personnel are "fit for duty" is insufficient to warrant a conclusion that they are supervisors.

The Board believes it is evident from the foregoing that Lead Dispatchers lack demonstrated supervisory authority. Their supervisory responsibilities concern mainly routine matters involving the dispatch area, and not the dispatchers themselves. While Lead Dispatchers may have input on various supervisory functions. In our view, the Lead Dispatchers are lead workers who do not possess supervisory duties in sufficient combination or degree to be deemed supervisory employees. Accordingly, the Board concludes that the Lead Dispatchers are not supervisory employees and therefore are included in the appropriate bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit is as follows: All dispatchers in the University City police department, including Lead Dispatchers.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause

since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by Local 6390, Communications Workers of America.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to Local 6390, within fourteen days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 25th day of September, 1989.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant

Mary L. Gant, Chairman

/s/ David Langston

David Langston, Employee Member

/s/ Rainey Crawford

Rainey Crawford, Employer Member